

§ 136-189.11. Transportation Investment Strategy Formula.

- (a) Funds Subject to Formula. – The following sources of funds are subject to this section:
 - (1) Highway Trust Fund funds, in accordance with G.S. 136-176.
 - (2) Federal aid funds.
- (b) Funds Excluded From Formula. – The following funds are not subject to this section:
 - (1) Federal congestion mitigation and air quality improvement program funds appropriated to the State by the United States pursuant to 23 U.S.C. § 104(b)(2) and 23 U.S.C. § 149.
 - (2) Funds received through competitive awards or discretionary grants through federal appropriations either for local governments, transportation authorities, transit authorities, or the Department.
 - (3) Funds received from the federal government that under federal law may only be used for Appalachian Development Highway System projects.
 - (4) Funds used in repayment of "GARVEE" bonds related to Phase I of the Yadkin River Veterans Memorial Bridge project.
 - (5) Funds committed to gap funding for toll roads funded with bonds issued pursuant to G.S. 136-176.
 - (6) Funds obligated for projects in the State Transportation Improvement Program that are scheduled for construction as of October 1, 2013, in State fiscal year 2012-2013, 2013-2014, or 2014-2015.
 - (7) Toll collections from a turnpike project under Article 6H of this Chapter and other revenue from the sale of the Authority's bonds or notes or project loans, in accordance with G.S. 136-89.192.
 - (8) Toll collections from the State-maintained ferry system collected under the authority of G.S. 136-82.
 - (9) Federal State Planning and Research Program funds (23 U.S.C. § 505) and Metropolitan Planning funds (23 U.S.C. §§ 104 and 134).
 - (10) Federal Lands Access Program funds received by the State pursuant to 23 U.S.C. § 204.
 - (11) Funds advanced pursuant to G.S. 136-186.
 - (12) Funds appropriated to the North Carolina State Ports Authority for the purposes described in G.S. 136-176(b3).
- (b1) Funds Excluded From Regional Impact Project Category. – Federal Surface Transportation Program-Direct Attributable funds expended on eligible projects in the Regional Impact Project category are excluded from that category.
- (c) Funds With Alternate Criteria. – The following federal program activities shall be included in the applicable category of the Transportation Investment Strategy Formula set forth in subsection (d) of this section but shall not be subject to the prioritization criteria set forth in that subsection:
 - (1) Bridge replacement.
 - (2) Interstate maintenance.
 - (3) Highway safety improvement.
 - (4) State funds used to match federal Congestion Mitigation and Air Quality Improvement (CMAQ) program funds apportioned to the State pursuant to 23 U.S.C. § 104(b)(2) and 23 U.S.C. § 149 for projects on the State highway system that improve the safety, mobility, and operational characteristics of the State highway system for motorists.
- (c1) Emergency Funds With Alternative Criteria. – The following funds, obligated in support of emergency repair work necessary to restore essential travel, minimize the extent of damage, or protect remaining facilities, as a result of events that occurred during a federal- or

State-declared emergency that significantly damaged the State-maintained transportation system to the extent that safe passage is jeopardized, shall be subject to subsection (d) of this section but shall not be subject to the prioritization criteria set forth in that subsection:

- (1) Federal or State funds obligated for repairs for which federal Emergency Relief Funds are available pursuant to 23 U.S.C. § 125.
 - (2) State funds obligated for repairs to damage occurring as a result of an event that is lawfully declared to be a federal or State emergency.
- (d) Transportation Investment Strategy Formula. – Funds subject to the Formula shall be distributed as follows:
- (1) Statewide Strategic Mobility Projects. – Forty percent (40%) of the funds subject to this section shall be used for Statewide Strategic Mobility Projects:
 - a. Criteria. – Transportation-related quantitative criteria shall be used by the Department to rank highway projects that address cost-effective Statewide Strategic Mobility needs and promote economic and employment growth. The criteria for selection of Statewide Strategic Mobility Projects shall utilize a numeric scale of 100 points, based on consideration of the following quantitative criteria:
 1. Benefit cost.
 2. Congestion.
 3. Safety.
 4. Economic competitiveness.
 5. Freight.
 6. Multimodal.
 7. Pavement condition.
 8. Lane width.
 9. Shoulder width.
 - b. Project cap. – No more than ten percent (10%) of the funds projected to be allocated to the Statewide Strategic Mobility category over any five-year period may be assigned to any project or group of projects in the same corridor within a Highway Division or within adjoining Highway Divisions.
 - (2) Regional Impact Projects. – Thirty percent (30%) of the funds subject to this section shall be used for Regional Impact Projects and allocated by population of Distribution Regions based on the most recent estimates certified by the Office of State Budget and Management:
 - a. Criteria. – A combination of transportation-related quantitative criteria, qualitative criteria, and local input shall be used to rank Regional Impact Projects involving highways that address cost-effective needs from a region-wide perspective and promote economic growth. Local input is defined as the rankings identified by the Department's Transportation Division Engineers, Metropolitan Planning Organizations, and Rural Transportation Planning Organizations. Transportation Division Engineer local input scoring shall take into account public comments. The Department shall ensure that the public has a full opportunity to submit public comments, by widely available notice to the public, an adequate time period for input, and public hearings. Board of Transportation input shall be in accordance with G.S. 136-189.11(g)(1) and G.S. 143B-350(g). The criteria utilized for selection of Regional Impact Projects shall be based thirty percent (30%) on local input and seventy percent (70%)

on consideration of a numeric scale of 100 points based on the following quantitative criteria:

1. Benefit cost.
2. Congestion.
3. Safety.
4. Freight.
5. Multimodal.
6. Pavement condition.
7. Lane width.
8. Shoulder width.
9. Accessibility and connectivity to employment centers, tourist destinations, or military installations.

(3) Division Need Projects. – Thirty percent (30%) of the funds subject to this section shall be allocated in equal share to each of the Department divisions, as defined in G.S. 136-14.1, and used for Division Need Projects.

a. Criteria. – A combination of transportation-related quantitative criteria, qualitative criteria, and local input shall be used to rank Division Need Projects involving highways that address cost-effective needs from a Division-wide perspective, provide access, and address safety-related needs of local communities. Local input is defined as the rankings identified by the Department's Transportation Division Engineers, Metropolitan Planning Organizations, and Rural Transportation Planning Organizations. Transportation Division Engineer local input scoring shall take into account public comments. The Department shall ensure that the public has a full opportunity to submit public comments, by widely available notice to the public, an adequate time period for input, and public hearings. Board of Transportation input shall be in accordance with G.S. 136-189.11(g)(1) and G.S. 143B-350(g). The criteria utilized for selection of Division Need Projects shall be based fifty percent (50%) on local input and fifty percent (50%) on consideration of a numeric scale of 100 points based on the following quantitative criteria, except as provided in sub-subdivision b. of this subdivision:

1. Benefit cost.
2. Congestion.
3. Safety.
4. Freight.
5. Multimodal.
6. Pavement condition.
7. Lane width.
8. Shoulder width.
9. Accessibility and connectivity to employment centers, tourist destinations, or military installations.

b. Alternate criteria. – Funding from the following programs shall be included in the computation of each of the Department division equal shares but shall be subject to alternate quantitative criteria:

1. Federal Surface Transportation Program-Direct Attributable funds expended on eligible projects in the Division Need Projects category.

2. Federal Transportation Alternatives funds appropriated to the State.
 3. Federal Railway-Highway Crossings Program funds appropriated to the State.
 4. Projects requested from the Department in support of a time-critical job creation opportunity, when the opportunity would be classified as transformative under the Job Development Investment Grant program established pursuant to G.S. 143B-437.52, provided that the State investment for all projects funded under this sub-sub-subdivision in any five-year period shall not exceed one hundred million dollars (\$100,000,000) in the aggregate and ten million dollars (\$10,000,000) per project. Upon the release of a State Transportation Improvement Program, the Department shall submit a report to the Joint Legislative Transportation Oversight Committee detailing the projects funded under this sub-sub-subdivision.
 5. Federal funds for municipal road projects.
- c. Bicycle and pedestrian limitation. – The Department shall not provide financial support for independent bicycle and pedestrian improvement projects, except for federal funds administered by the Department for that purpose. This sub-subdivision shall not apply to funds allocated to a municipality pursuant to G.S. 136-41.1 that are committed by the municipality as matching funds for federal funds administered by the Department and used for bicycle and pedestrian improvement projects. This limitation shall not apply to funds authorized for projects in the State Transportation Improvement Program that are scheduled for construction as of October 1, 2013, in State fiscal year 2012-2013, 2013-2014, or 2014-2015.
- (4) Criteria for nonhighway projects. – Nonhighway projects subject to this subsection shall be evaluated through a separate prioritization process established by the Department that complies with all of the following:
- a. The criteria used for selection of projects for a particular transportation mode shall be based on a minimum of four quantitative criteria.
 - b. Local input shall include rankings of projects identified by the Department's Transportation Division Engineers, Metropolitan Planning Organizations, and Rural Transportation Planning Organizations. Transportation Division Engineer local input scoring shall take into account public comments. The Department shall ensure that the public has a full opportunity to submit public comments, by widely available notice to the public, an adequate time period for input, and public hearings. Board of Transportation input shall be in accordance with G.S. 136-189.11(g)(1) and G.S. 143B-350(g).
 - c. The criteria shall be based on a scale not to exceed 100 points that includes no bonus points or other alterations favoring any particular mode of transportation.
- (d1) Additional Requirement for High-Cost Projects. – State funding may not be expended for a light rail project until a written agreement is provided to the Department establishing that all non-State funding necessary to construct the project has been committed.

- (e) **Authorized Formula Variance.** – The Department may vary from the Formula set forth in this section if it complies with the following:
- (1) **Limitation on variance.** – The Department, in obligating funds in accordance with this section, shall ensure that the percentage amount obligated to Statewide Strategic Mobility Projects, Regional Impact Projects, and Division Need Projects does not vary by more than fifteen percent (15%) over any five-year period and ten percent (10%) over any 10-year period from the percentage required to be allocated to each of those categories by this section. Funds obligated among distribution regions or divisions pursuant to this section may vary up to fifteen percent (15%) over any five-year period and ten percent (10%) over any 10-year period.
 - (2) **(Effective until July 1, 2019) Calculation of variance.** – Each year the Secretary shall calculate the amount of Regional Impact and Division Need funds allocated in that year to each division and region, the amount of funds obligated, and the amount the obligations exceeded or were below the allocation. In calculating the amount of funds obligated, the Secretary shall include any amount used as repayment for funds advanced pursuant to G.S. 136-186. In the first variance calculation under this subdivision following the end of fiscal year 2015-2016, the target amounts obtained according to the Formula set forth in this section shall be adjusted to account for any differences between allocations and obligations reported for the previous year. In the first variance calculation under this subdivision following the end of fiscal year 2016-2017, the target amounts obtained according to the Formula set forth in this section shall be adjusted to account for any differences between allocations and obligations reported for the previous two fiscal years. In the first variance calculation under this subdivision following the end of fiscal year 2017-2018, the target amounts obtained according to the Formula set forth in this section shall be adjusted to account for any differences between allocations and obligations reported for the previous three fiscal years. In the first variance calculation under this subdivision following the end of fiscal year 2018-2019, the target amounts obtained according to the Formula set forth in this section shall be adjusted to account for any differences between allocations and obligations reported for the previous four fiscal years. The new target amounts shall be used to fulfill the requirements of subdivision (1) of this subsection for the next update of the Transportation Improvement Program. The adjustment to the target amount shall be allocated by Distribution Region or Division, as applicable.
 - (2) **(Effective July 1, 2019) Calculation of Variance.** – Each year, the Secretary shall calculate the amount of Regional Impact and Division Need funds allocated in that year to each division and region, the amount of funds obligated, and the amount the obligations exceeded or were below the allocation. In calculating the amount of funds obligated, the Secretary shall include any amount used as repayment for funds advanced pursuant to G.S. 136-186. The target amounts obtained according to the Formula set forth in this section shall be adjusted to account for any differences between allocations and obligations reported for the previous five fiscal years. The new target amounts shall be used to fulfill the requirements of subdivision (1) of this subsection for the next update of the Transportation Improvement Program. The adjustment to the target amount shall be allocated by Distribution Region or Division, as applicable.

(e1) Repealed by Session Laws 2016-94, s. 35.12(a), effective July 1, 2016.

(f) Incentives for Local Funding and Highway Tolling. – The Department may revise highway project selection ratings based on local government funding initiatives and capital construction funding directly attributable to highway toll revenue. Projects authorized for construction after November 1, 2013, and contained in the 10-year Department of Transportation work program are eligible for a bonus allocation under this subsection:

- (1) Definitions. – The following definitions apply in this subsection:
 - a. Bonus allocation. – The allocation obtained as a result of local government funding participation or highway tolling.
 - b. Local funding participation. – Non-State or nonfederal funds committed by local officials to leverage the commitment of State or federal transportation funds towards construction.
- (2) Funds obtained from local government funding participation. – Upon authorization to construct a project with funds obtained by local government funding participation, the Department shall make available for allocation as set forth in subdivision (4) of this section an amount equal to one-half of the local funding commitment for other eligible highway projects that serve the local entity or entities that provided the local funding.
- (3) Funds obtained through highway tolling. – Upon authorization to construct a project with funding from toll revenue, the Department shall make available for allocation an amount equal to one-half of the project construction cost derived from toll revenue bonds. Upon authorization to construct a toll project in which no project construction cost is derived from toll revenue bonds, the Department shall make available for allocation an amount equal to one-half of the revenue expected from the project over the first 10 years of the project, less operations costs, as set forth in the Investment Grade Traffic and Revenue Study. The amount made available for allocation to other eligible highway projects shall not exceed two hundred million dollars (\$200,000,000) of the capital construction funding directly attributable to the highway toll revenues committed in the Investment Grade Traffic and Revenue Study, for a project for which funds have been committed on or before July 1, 2015. The amount made available for allocation to other eligible highway projects shall not exceed one hundred million dollars (\$100,000,000) of the capital construction funding directly attributable to the highway toll revenues committed in the Investment Grade Traffic and Revenue Study, for a project for which funds are committed after July 1, 2015. If the toll project is located in one or more Metropolitan Planning Organization or Rural Transportation Planning Organization boundaries, based on the boundaries in existence at the time of letting of the project construction contract, the bonus allocation shall be distributed proportionately to lane miles of new capacity within the Organization's boundaries. The Organization shall apply the bonus allocation only within those counties in which the toll project is located. Except for tolls removed pursuant to G.S. 136-89.196, if a toll is removed or a toll is not implemented, any funds made available for allocation or allocated under this subdivision shall be withheld by the Department or repaid to the Department, as applicable. Any funds withheld or repaid under this subdivision may be reallocated according to the requirements of this subdivision.
- (4) Use of bonus allocation. – The Metropolitan Planning Organization, Rural Transportation Planning Organization, or the local government may choose to

apply its bonus allocation in one of the three categories or in a combination of the three categories as provided in this subdivision:

- a. Statewide Strategic Mobility Projects category. – The bonus allocation shall apply over the five-year period in the State Transportation Improvement Program in the cycle following the contractual obligation.
- b. Regional Impact Projects category. – The bonus allocation is capped at ten percent (10%) of the regional allocation, or allocation to multiple regions, made over a five-year period and shall be applied over the five-year period in the State Transportation Improvement Program in the cycle following the contractual obligation.
- c. Division Needs Projects category. – The bonus allocation is capped at ten percent (10%) of the division allocation, or allocation to multiple divisions, made over a five-year period and shall be applied over the five-year period in the State Transportation Improvement Program in the cycle following the contractual obligation.

(g) Reporting. – The Department shall publish on its Web site, in a link to the "Strategic Transportation Investments" Web site linked directly from the Department's home page, the following information in an accessible format as promptly as possible:

- (1) The quantitative criteria used in each highway and nonhighway project scoring, including the methodology used to define each criteria, the criteria presented to the Board of Transportation for approval, and any adjustments made to finalize the criteria.
- (2) The quantitative and qualitative criteria in each highway or nonhighway project scoring that is used in each region or division to finalize the local input score and shall include distinctions between the Department Division scoring and methodologies and Metropolitan Planning Organization and Rural Transportation Planning Organization scoring and methodologies.
- (3) Notification of changes to the methodologies used to calculate quantitative criteria.
- (4) The final quantitative formulas, including the number of points assigned to each criteria, used in each highway and nonhighway project scoring used to obtain project rankings in the Statewide, Regional, and Division categories. If the Department approves different formulas or point assignments regionally or by division, the final scoring for each area shall be noted.
- (5) The project scorings associated with the release of the draft and final State Transportation Improvement Program, including Division Engineer, Metropolitan Planning Organization, and Rural Transportation Planning Organization scoring and ranking.

(h) Improvement of Prioritization Process. – The Department shall endeavor to continually improve the methodology and criteria used to score highway and non-highway projects pursuant to this Article, including the use of normalization techniques, and methods to strengthen the data collection process. The Department is directed to continue the use of a workgroup process to develop improvements to the prioritization process. Workgroup participants shall include, but not be limited to, the North Carolina League of Municipalities, the North Carolina Association of County Commissioners, the North Carolina Metropolitan Mayors Coalition, and the North Carolina Council of Regional Governments. The workgroup, led by the Prioritization Office, shall contain a minimum of four representatives each from the North Carolina Association of Municipal Planning Organizations and the North Carolina Association of Rural Planning Organizations, and these members will be selected by a vote of each

organization. Department participants in the workgroup shall not exceed half of the total group. Beginning December 1, 2016, the Department shall report annually to the Joint Legislative Transportation Oversight Committee on any changes made to the highway or non-highway prioritization process and the resulting impact to the State Transportation Improvement Program. The General Assembly members and staff may attend all workgroup meetings related to the prioritization process, all subgroup meetings of the workgroup, and have access to all related workgroup or subgroup documents. (2013-183, s. 1.1(a), (b); 2013-410, s. 38(b), (c), (d), (h); 2014-58, ss. 6, 8; 2014-115, s. 56.6; 2015-241, s. 29.41(a); 2016-94, s. 35.12(a); 2017-57, ss. 34.6(b), 34.27(b); 2018-5, ss. 34.5(c), 34.6(a)-(e), 34.7(a); 2018-97, s. 7.5(a).)